IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16174 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARSOTTAMBHAI ISHWARBHAI PATEL

Versus

MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 16174 of 2003

MR GK RATHOD for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1-2

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/09/2004

ORAL JUDGEMENT

Heard the learned Advocates appearing for the

parties.

1. In the present petition, the petitioner has made a grievance that despite the award of the Labour Court granting reinstatement to the petitioner after setting aside the order of dismissal from service, the respondents herein have not released the increments of the petitioner for intervening period from the date of dismissal till reinstatement.

2. The petitioner, who was working with the respondents came to be dismissed from service by order dated 2nd April, 1986. The petitioner challenged this order of dismissal by filing a Reference (LCB) no.927 of 1987 before the Labour Court, Bhavnagar. The Labour Court by its award dated 26th May, 1992 was pleased to set aside the order of dismissal and directed that the petitioner be reinstated in service, however, without any back wages. The Labour Court was pleased to accept the contention of the petitioner that he was suffering from T.B. during the period when he was allegedly absent without proper leave. On that count, though the Labour Court found the inquiry properly conducted, was of the opinion that the order of dismissal was harsh and excessive. The Labour Court was, therefore, pleased to give the above directions.

3. It is the case of the petitioner that pursuant to the award of the Labour Court, the petitioner has been reinstated in service on 19-11-1992. The petitioner contends that despite repeated representations, the petitioner has not been granted continuity of service and petitioner's pay is not properly fixed after reinstatement.

4. Appearing for the petitioner, learned Advocate Shri G.K.Rathod has contended that the action of the respondents is illegal. He submits that if the petitioner is not given the benefit of the period between 2-4-1986 i.e. his date of dismissal and 19-11-1992 i.e. the date of his actual reinstatement, the petitioner would suffer irreparable loss and injury. Besides, the said period being treated as a break, the petitioner will also suffer on account of loss of increments during the said period and eventually, the petitioner would be subjected to a penalty of permanently withholding increments during the entire period in question which result was never intended by the Labour Court. The learned Advocate for the petitioner has placed reliance on the circular dated 17th March, 1988 in support of his contentions. He has also relied on the decision of the

Honourable the Supreme Court in the case of SANAT KUMAR DWIVEDI v. DHAR JILA SAHAKARI BHOOMI VIKAS BANK MARYADIT AND OTHERS reported in 2001 AIR SCW 2430. Appearing for the respondents, learned Advocate Ms. Mandavia has contended that even if the continuity for the period between 2-4-1986 to 19-11-1992 is to be granted to the petitioner, the petitioner cannot claim increments during the period when he was actually unauthorizedly absent.

5. Considering the submissions made and the facts of the present case, I find that the Labour Court had accepted the version of the petitioner that he was suffering from T.B. which prevented him from discharging his duties for certain period. On account of this fact, the Labour Court was pleased to come to the conclusion that the dismissal order was harsh and excessive. The Labour Court having set aside the order of dismissal and granted reinstatement to the workman without back wages, if the petitioner is further deprived of his yearly increments for the period between 2-4-1986 to 19-11-1992, the petitioner would suffer substantial financial loss, which in my opinion, the Labour Court did not intend to inflict upon the petitioner. This, however, does not mean that the petitioner would be entitled to increments during the period when he was actually unauthorizedly absent.

6. In the result, it is directed that the respondents shall carry out the pay fixation of the petitioner upon his reinstatement on 19-11-1992 by treating the period between 2-4-1986 to 19-11-1992 as continuous service and granting notional benefits of increment falling due during the said period only and not for the period when the petitioner was found as per the chargesheet to be unauthorizedly absent. The petition, therefore, succeeds to the above extent. Rule is made absolute accordingly with no orders as to costs.

(Akil Kureshi,J.)

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